IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.5991 OF 2005

Bombay Dyeing & Trading Co. Ltd.).. Petitioner

Versus

Yogesh V. Tipre).. Respondent

Mr.P.K. Rele with Mr.A.K.Jalisatgi for the Petitioner.
Mr.Arshad Shaikh for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 8TH SEPTEMBER 2005

P.C. :

. This Petition challenges Award Part-I dated 30th April 2005 passed by the Labour Court, Mahad in Reference (IDA) No.206 of 2002 holding that the enquiry instituted against the Respondent was not fair and proper and in accordance with the principles of natural justice. Evidence of six witnesses was led on the same day before the Enquiry Officer. The Labour Court has found that this in itself would prejudice the workman who was represented by a co-workman, both of whom had no knowledge of law.

2. Besides this, some documents were tendered at the enquiry itself and although there was no objection

from the workman, the Enquiry Officer considered these documents without the workman and his Union Representative having an opportunity to study them in advance. The Labour Court has found that this has prejudiced the workman. On this ground also the enquiry was set aside.

3. In my view, the Labour Court cannot be faulted for arriving at the conclusion that the very fact that six witnesses were examined one after the other on one day, would in itself prejudice the workman who was represented by a person without any legal background. Reliance is placed by the learned Advocate for the Respondent on the case of *Anant G. Joshi* vs. *Maharashtra State Financial Corporation and others*, **1991 I CLR 396**, where in paragraph 10 after referring to the case in Kesoram Cotton Mills Ltd. vs. Gangadhar, 1963 II LLJ 371, the learned Judge has observed thus :-

> "... In my judgment, this decision squarely applies to the facts in the present case. It is immaterial whether the Petitioner asked for time or not. What is material is whether the enquiry officer conducted himself to a manner required of him. Having regard to the ratio of the decision, I have no hesitation in holding that the enquiry officer has not conducted himself fairly and properly."

4. The other contention raised in this Petition is that the conclusion of the Labour Court that the Enquiry

Officer ought to have been examined to prove that the findings are not perverse, is incorrect and is required to be set aside. This issue need not be considered since the enquiry itself has been held to be vitiated. No interference is called for.

5. Mr.Rele contends that one Anil Vinayak Pottdar who was examined in the application filed by the Petitioner under Section 33(2)(b) for approval of the termination of service of the Respondent, has stated in his evidence that the enquiry was conducted fairly. What is the effect of that evidence will be considered by the Labour Court when it decides the Award Part-II.

6. Petition rejected.